

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Northern District of California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. CV 11-02475 HRL	DATE FILED 5/20/2011	U.S. DISTRICT COURT 280 South First Street, Rm 2112, San Jose, CA 95113
PLAINTIFF HEINEKEN BROUWERIJEN BV		DEFENDANT WINERY EXCHANGE INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,504,208		SEE ATTACHED Complaint
2 2,932,414		
3 1,731,454		
4 3,458,219		
5 3,458,220		

1,846,907

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 2,019,060			
2 1,342,529			
3 2,781,138			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK Richard W. Wieking	(BY) DEPUTY CLERK Betty Walton	DATE May 25, 2011
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

1 GREENBERG TRAURIG, LLP  
2 Valerie W. Ho (Bar No. 200505)  
3 *hov@gtlaw.com*  
4 2450 Colorado Avenue, Suite 400E  
5 Santa Monica, CA 90404  
6 Telephone: (310) 586-7700  
7 Facsimile: (310) 586-7800

8 Joseph R. Wetzel (Bar No. 238008)  
9 *wetzelj@gtlaw.com*  
10 153 Townsend Street, 8th Floor  
11 San Francisco, CA 94107  
12 Telephone: (415) 655-1300  
13 Facsimile: (415) 707-2010

14 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, L.L.P.  
15 Jonathan Hudis  
16 *jhudis@oblon.com*  
17 1940 Duke Street  
18 Alexandria, VA 22314  
19 Telephone: (703) 413-3000  
20 Facsimile: (703) 413-2220

21 *Attorneys for Plaintiffs,*  
22 HEINEKEN BROUWERIJEN B.V.  
23 and HEINEKEN USA INC.

24 UNITED STATES DISTRICT COURT  
25 NORTHERN DISTRICT OF CALIFORNIA

26 HEINEKEN BROUWERIJEN B.V., a  
27 Netherlands Corporation, and HEINEKEN  
28 USA INC., a New York Corporation

Plaintiffs,

v.

WINERY EXCHANGE, INC. d/b/a WORLD  
BREWS, a California Corporation,

Defendant.

CV Case No. **11**

**2475**

COMPLAINT FOR:

- (1) Trademark Infringement Under the Lanham Act;
- (2) False Designation of Origin Under the Lanham Act;
- (3) Common Law Trademark Infringement;
- (4) Common Law Unfair Competition; and
- (5) Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

E-filing

ORIGINAL  
FILED

MAY 20 2011

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

HRL

1 This is an action involving the sale of bottled beer bearing infringing trade dress that violate  
2 Plaintiffs' trademark rights. Plaintiffs Heineken Brouwerijen B.V. ("HBBV") and Heineken USA Inc.  
3 ("HUSA"), through their undersigned attorneys, allege as follows:

4 **Nature of the Action**

5 1. This action is for (I) federal trademark infringement, (II) federal false designation of  
6 origin, (III) common law trademark infringement, (IV) common law unfair competition, and (V)  
7 unlawful business practices and false advertising under California Business & Professions Code §§  
8 17200, *et seq.*

9 **Jurisdiction and Venue**

10 2. The Court's jurisdiction over Counts I and II is based upon 15 U.S.C. §1121(a) (action  
11 arising under the Lanham Act), 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1338(a) (any Act of  
12 Congress relating to trademarks). The Court's jurisdiction over Counts III, IV and V is based upon 28  
13 U.S.C. §1338(b) (unfair competition joined with a substantial and related claim under trademark law)  
14 and 28 U.S.C. §1367(a) (supplemental jurisdiction).

15 3. The Court also has jurisdiction based upon 28 U.S.C. §1332 (diversity and amount in  
16 controversy in excess of \$75,000, exclusive of interest and costs).

17 4. The Court has personal jurisdiction over Defendant as Defendant is a California  
18 corporation domiciled in this judicial district.

19 5. Upon information and belief, venue is proper in this judicial district under 28 U.S.C. §§  
20 1391(b) and (c).

21 **Intradistrict Assignment**

22 6. This is an Intellectual Property Action to be assigned on a district-wide basis pursuant to  
23 Civil Local Rule 3-2(c).

24 **The Parties and Their Businesses**

25 7. Plaintiff HBBV is a Dutch corporation with its principal place of business at Tweede  
26 Weteringplantsoen 21, NL-1017 Zd Amsterdam, The Netherlands.

27 8. Plaintiff HUSA is a New York corporation with its principal place of business at 360  
28 Hamilton Avenue, Suite 1103, White Plains, NY 10601.

1 9. Upon information and belief, Defendant Winery Exchange, Inc. d/b/a World Brews  
2 ("Winery Exchange") is a California corporation with its principal place of business at 500 Redwood  
3 Boulevard, Suite 200, Novato, CA 94947.

4 10. Upon information and belief, Winery Exchange imports, procures, promotes, distributes  
5 and/or sells beer in the United States.

6 11. Upon information and belief, Winery Exchange distributes, promotes and/or sells beer to  
7 retail locations such as grocery stores in this judicial district.

8 12. Upon information and belief, Winery Exchange is doing business in the State of  
9 California.


10 13. Upon information and belief, Winery Exchange is doing business in this judicial district.





11 **Plaintiffs and Their Trademarks**



12 14. HBBV and HUSA are affiliated companies and are members of the Heineken Group, a  
13 worldwide leading owner and manufacturer of beer and similar beverages (collectively, "Heineken").  
14 HBBV is the brewery of the world-renown HEINEKEN beer, and HUSA is the exclusive United States  
15 importer of HEINEKEN beer.



16 15. For over 60 years, Heineken and its predecessors have manufactured and marketed  
17 bottled beer under the trademark HEINEKEN and a distinctive trade dress as described in detail below.  
18 As a result of this long and extensive usage on quality beer products, this trade dress is distinctive, well  
19 known and well received.


20 16. Heineken owns and uses numerous marks that are the subject of the following federal  
21 registrations and pending applications (including the common law rights thereto):

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods/Services</u>
 The drawing is lined for the color green and color is claimed as a feature of the mark.	1,504,208	September 13, 1988	(Int'l Class: 32) Beer

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods/Services</u>
	2,932,414	March 15, 2005	(Int'l Class: 32) Beers
	1,731,454	November 10, 1992	(Int'l Class: 32) Beers
	3,458,219	July 1, 2008	(Int'l Class: 32) Beer; pilsner
	3,458,220	July 1, 2008	(Int'l Class: 32) Beer; pilsner
	1,846,907	July 26, 1994	(Int'l Class: 32) Beers
	2,019,060	November 26, 1996	(Int'l Class: 32) Beer

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods/Services</u>
	1,342,529	June 18, 1985	(Int'l Class: 16) Pens, Posters, and Paper Coasters  (Int'l Class: 21) Delft Mugs, Stemware, Seidels, Bottle Openers, Plastic Cups; Novelty Items-Namely, Plastic Bottle and Can Replicas  (Int'l Class: 25) Jackets, T-Shirts, Athletic Jerseys, Sports Caps, Visors, Hats, Suspenders, and Wooden Shoes  (Int'l Class: 26) Belt Buckles, and Embroidered Emblems  (Int'l Class: 28) Golf Balls, and Flying Discs  (Int'l Class: 34) Lighters
	2,781,138	November 11, 2003	(Int'l Class: 32) Beer

<u>Mark</u>	<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Goods/Services</u>
	79-089890	October 19, 2010	(Int'l Class: 32) Beers, including alcohol free beers
	79-080835	March 4, 2010	(Int'l Class: 32) Beers

<u>Mark</u>	<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Goods/Services</u>
	79-089891	October 19, 2010	(Int'l Class: 32) Beers, including alcohol free beers

Copies of the above-mentioned trademark registration and application records from the U.S. Patent and Trademark Office are attached hereto as **Exhibits A - L**. Collectively, these registered and pending marks shall be referred to herein as the "Heineken's Marks."

17. The above-noted federal registrations are valid and subsisting.

18. U.S. Registration Nos. 1,342,529; 1,504,208; 1,731,454; 1,846,907, 2,319,060; 2,781,138; and 2,932,414 have achieved incontestable status pursuant to 15 U.S.C. § 1065.

19. Heineken also owns trade dress rights to the distinctive label on its bottles of beer. The trade dress includes: (a) an oval shape; (b) the colors green, red, white and black; (c) a green oval "race track" containing white text; (d) a black banderol or ribbon across the oval, containing text; (e) red text within the oval; (f) a red star placed above the banderol; and (g) a "smiling e" used within the mark HEINEKEN (Plaintiffs' Trade Dress). The following is an example of HBBV's trade dress:



20. Heineken's Marks and Trade Dress are used extensively on bottled beer, which are promoted and sold at retail stores including grocery stores throughout the United States.

21. Heineken's Marks and Trade Dress are inherently distinctive and/or have acquired distinctiveness, represent valuable goodwill, have gained a reputation for quality belonging exclusively to Heineken, and are widely recognized by the general consuming public of the United States as designations of source for Heineken's products.

**Defendant's Conduct Constitutes Infringement,  
False Designation of Origin, and Unfair Competition**

22. Upon information and belief, Defendant Winery Exchange is importing, procuring, distributing, promoting and/or selling beer in packaging bearing unauthorized labels that are confusingly similar to Heineken's Marks and Trade Dress, as follows:



23. Winery Exchange's Gouden Haven beer label includes: (a) an oval shape; (b) the colors green, red, white and black; (c) a green oval "race track" containing white text; (d) a black banderol or ribbon across the oval, containing text; (e) red text within the oval; (f) a design element placed above the banderol; and (g) use of the "smiling e" within the Gouden Haven name.

24. Winery Exchange's Dutch Republic beer label includes: (a) an oval shape; (b) the colors green, red, white and black; (c) an overall oval shape formed by two green ribbons containing white text; (d) a white horizontal space across the oval, containing text; (e) red text within the oval; and (f) a red design element placed above the central text.

25. Upon information and belief, Winery Exchange's Gouden Haven bottled beer is being distributed throughout the United States to the retailers: Albertsons, Lucky, Jewel-Osco, Shaws, Cub Foods, and Farm Fresh.

26. Upon information and belief, Winery Exchange's Dutch Republic bottled beer is being distributed throughout California, Nevada and Arizona to the retailer Fresh & Easy Neighborhood Market.

27. Upon information and belief, Defendant Winery Exchange first imported, promoted and/or sold Defendant's Gouden Haven and Dutch Republic bottled beer long after Heineken began extensively using Plaintiffs' Marks and Trade Dress on beer bottles in commerce in the United States.



1        28.    Upon information and belief, Winery Exchange engaged in its unauthorized and  
2 complained of conduct with full knowledge of Plaintiffs' HEINEKEN bottled beer products and well  
3 known Marks and Trade Dress.

4        29.    Upon information and belief, Winery Exchange engaged in its unauthorized and  
5 complained of conduct commencing long after Heineken's Marks and Trade Dress had become well  
6 known.

7        30.    Winery Exchange's sale of its Gouden Haven and Dutch Republic bottled beer products  
8 bearing the infringing labels depicted above is likely to lead to confusion as to the source of origin of  
9 Winery Exchange's products, in that purchasers of Defendant's beer are likely to believe that they  
10 originate from, are licensed or sponsored by, or in some way are associated with Heineken.

11       31.    Winery Exchange's sale of Defendant's Gouden Haven and Dutch Republic bottled beer  
12 bearing their infringing labels constitutes an injury to Heineken's business reputation and goodwill.

13       32.    Winery Exchange's importation, procurement, distribution, promotion and/or sale of  
14 Defendant's Gouden Haven and Dutch Republic bottled beer bearing its infringing labels constitute  
15 unfair competition and false designation of origin in violation of federal and California state law.

16       33.    Upon information and belief, the activities of Winery Exchange complained of herein  
17 continue in spite of Defendant's knowledge of Heineken's Marks and Trade Dress.

18       34.    The activities of Winery Exchange complained of herein have damaged and are  
19 continuing to damage Heineken.

20       35.    Upon information and belief, the activities of Winery Exchange complained of herein  
21 were committed and are being committed willfully and intentionally in knowing disregard of  
22 Heineken's rights.

23       36.    The wrongful activities of Winery Exchange alleged herein have unjustly enriched  
24 Defendant to the damage and detriment of Heineken.

25       37.    The wrongful activities of Winery Exchange alleged herein have irreparably harmed and  
26 continue to irreparably harm Heineken, and these activities will continue unless enjoined by this Court.  
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38. Heineken repeats and realleges the allegations set forth in paragraphs 1 through 37 of the Complaint as though fully set forth herein.

40. During the period in which Winery Exchange is infringing, Heineken has no adequate remedy at law.

**(Federal False Designation of Origin)**

42. Winery Exchange's conduct — i.e., the importation, procurement, promotion, distribution and/or sale of Defendant's Gouden Haven and Dutch Republic beer bearing their infringing labels — constitutes federal false designation of origin under 15 U.S.C. §1125(a).

**COUNT III**

44. Heineken repeats and realleges the allegations set forth in paragraphs 1 through 37 of the Complaint as though fully set forth herein.

46. During the period in which Winery Exchange is infringing, Heineken has no adequate remedy at law.

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- 1           b.       An injunction directing Winery Exchange to recall all of the Defendant's beer products  
2 bearing the unauthorized label designs and/or Heineken's Marks and/or Trade Dress and/or any  
3 colorable imitation(s) thereof;
- 4           c.       An injunction directing Defendant to deliver to Plaintiff HUSA all of Defendant's bottled  
5 beer, other products, packaging and materials bearing the unauthorized labels and/or Heineken's Marks  
6 and/or Trade Dress, and/or any colorable imitations thereof;
- 7           d.       An Order and Judgment directing Winery Exchange to remove any and all images of the  
8 unauthorized label designs, Heineken's Marks and/or Trade Dress, or any colorable imitation(s) thereof,  
9 from all products, any web sites or promotional materials, whether electronic, printed or otherwise,  
10 under Winery Exchange's direct or indirect control;
- 11          e.       An award of Winery Exchange's profits and a trebling thereof;
- 12          f.       An award of Heineken's damages and a trebling thereof;
- 13          g.       An award of punitive damages for Winery Exchange's acts of common law trademark  
14 infringement and/or common law unfair competition;
- 15          h.       Heineken's attorneys' fees for Winery Exchange's acts because this is an exceptional  
16 case;
- 17          i.       Prejudgment interest;
- 18          j.       Heineken's costs; and
- 19          k.       Such other and further relief as the Court deems just and proper.
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1  
2 Dated: May 20, 2011  
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By: 

4 GREENBERG TRAURIG, LLP  
5 Valerie W. Ho (Bar No. 200505)  
6 *hov@gtlaw.com*  
7 2450 Colorado Avenue, Suite 400E  
8 Santa Monica, CA 90404  
9 Telephone: (310) 586-7700  
10 Facsimile: (310) 586-7800

11 Joseph R. Wetzel (Bar No. 238008)  
12 *wetzelj@gtlaw.com*  
13 153 Townsend Street, 8th Floor  
14 San Francisco, CA 94107  
15 Telephone: (415) 655-1300  
16 Facsimile: (415) 707-2010

17 OBLON, SPIVAK, MCCLELLAND, MAIER &  
18 NEUSTADT, L.L.P.  
19 Jonathan Hudis  
20 *jhudis@oblon.com*  
21 1940 Duke Street  
22 Alexandria, VA 22314  
23 Telephone: (703) 413-3000  
24 Facsimile: (703) 413-2220

25 *Attorneys for Plaintiffs*  
26 HEINEKEN BROUWERIJEN B.V.  
27 and HEINEKEN USA INC.  
28

1  
2 **DEMAND FOR A JURY TRIAL**

3 Pursuant to Fed. R. Civ. P. 38(b) and 38(c), Plaintiffs demand a jury trial for all issues so triable.

4  
5 Dated: May 20, 2011

By: 

6  
7 GREENBERG TRAURIG, LLP  
Valerie W. Ho (Bar No. 200505)  
8 *hov@gtlaw.com*  
2450 Colorado Avenue, Suite 400E  
9 Santa Monica, CA 90404  
Telephone: (310) 586-7700  
10 Facsimile: (310) 586-7800

11 Joseph R. Wetzel (Bar No. 238008)  
*wetzelj@gtlaw.com*  
12 153 Townsend Street, 8th Floor  
San Francisco, CA 94107  
13 Telephone: (415) 655-1300  
Facsimile: (415) 707-2010

14  
15 OBLON, SPIVAK, MCCLELLAND, MAIER &  
NEUSTADT, L.L.P.  
Jonathan Hudis  
16 *jhudis@oblon.com*  
1940 Duke Street  
17 Alexandria, VA 22314  
Telephone: (703) 413-3000  
18 Facsimile: (703) 413-2220

19 *Attorneys for Plaintiffs*  
20 HEINEKEN BROUWERIJEN B.V.  
and HEINEKEN USA INC.